

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

N.A.I.F. INC., Friend of Abdullah :  
T. Hameen; ISMAA'EEL H. HACKETT; :  
and SHAKIRAH HAMEEN, :  
: :  
Plaintiffs, :  
: :  
v. : Civil Action No. 03-506 JJF  
: :  
ROBERT SNYDER, BETTY BURRIS, :  
LARRY MCGUIGAN, CHARLES CUNNINGHAM, :  
RON G. HOSTERMEN, FRANK PENNELL, :  
STANLEY W. TAYLOR, JR., CARL C. :  
DANBERG, and PAUL HOWARD, :  
: :  
Defendants. :

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N.A.I.F., Inc., Wilmington, Delaware.  
Pro Se Plaintiff.

Ismaa'eel H. Hackett, Wilmington, Delaware.  
Pro Se Plaintiff.

Shakirah Hameen, Philadelphia, Pennsylvania.  
Pro Se Plaintiff.

Stuart B. Drowos, Esquire of the DEPARTMENT OF JUSTICE FOR THE  
STATE OF DELAWARE, Wilmington, Delaware.  
Attorney for Defendants Robert Snyder, Betty Burris, Larry  
McGuigan, Charles Cunningham, Ron G. Hostermen, Frank Pennell,  
Stanley w. Taylor, Jr., Carl C. Danberg, and Paul Howard.

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O P I N I O N

March 30, 2005  
Wilmington, Delaware

  
**FARNAN, District Judge**

Pending before the Court is the Motion For Summary Judgment (D.I. 14) filed by State Defendants.

Because the Court concludes that "next friends" Hackett and NAIF lack standing to sue, and Plaintiffs have not offered any facts, by means of affidavit or other evidence, to support a finding that Defendants' conduct deprived Mr. Hameen of a federally secured right, the Motion For Summary Judgment (D.I. 14) will be granted.

#### **BACKGROUND**

##### **I. Procedural Background**

Plaintiff Ismaa'eel Hackett is the Director and Iman of the North American Islamic Foundation, Inc. ("NAIF"), a national not-for-profit organization located in Wilmington, Delaware. Mr. Hackett and NAIF filed this lawsuit pursuant to 42 U.S.C. § 1983 as next friend of Abdullah T. Hameen, a former death row inmate who was executed in May 2001. In their Amended Complaint (D.I. 3), Plaintiffs Hackett and NAIF allege that Defendants violated Mr. Hameen's First Amendment right to freedom of religion when they failed to allow Mr. Hackett to act as Mr. Hameen's religious advisor at the time of his execution.

On October 24, 2003, State Defendants filed the Motion For Summary Judgment (D.I. 14). By their Motion, Defendants challenge the standing of Plaintiffs NAIF and Mr. Hackett to bring this lawsuit, and request summary judgment with respect to the First

Amendment claim.

On January 27, 2004, Plaintiffs Hackett and NAIF filed a Second Amended Complaint (D.I. 23), in which they added Shakirah Hameen, Mr. Hameen's widow, as a plaintiff and added a claim pursuant to the Religious Land Use And Institutionalized Person Act ("RLUIPA"), 42 U.S.C. § 2000cc-1. The Court entered an Order (D.I. 26) granting Plaintiff's Motion For Leave To Amend, and, on March 30, 2005, denied the State Defendants' motion for reconsideration of that decision.

At present, the plaintiffs in this lawsuit are NAIF and Mr. Hackett as "next friends," and Ms. Hameen. There are currently two claims pending in the lawsuit: 1) the alleged violation of Mr. Hameen's First Amendment right to free exercise of religion brought pursuant to § 1983, and 2) the alleged violation of RLUIPA.

## **II. Factual Background**

Mr. Hackett volunteered his services as a religious advisor to Muslim inmates at the DCC. In that capacity, Mr. Hackett counseled Abdullah Hameen, who was executed on May 25, 2001.

Plaintiffs allege that Mr. Hameen requested that Mr. Hackett be present at his execution and that the prison Chaplain not be present. (D.I. 22 at 23-24.) Defendant Deputy Warden Burris testified that she and Defendant Warden Snyder met regularly with Mr. Hameen in the weeks prior to his execution. (D.I. 15 at A-1.) Defendant Burris testified that she does not remember Mr. Hameen ever requesting an Iman to be present at his execution or objecting

to the presence of Defendant Chaplain Pennell. (Id.) Mr. Hameen did not place Mr. Hackett on the list of witnesses to be present at his execution. (D.I. 32 at C-15.) However, Plaintiffs allege that one of the Deputy Attorneys General told Mr. Hackett in a telephone conversation that he would be allowed in the witness room during Mr. Hameen's execution. (D.I. 22 at 22-23.)

Defendant Pennell testified that Mr. Hackett was allowed to go to the execution housing unit to counsel Mr. Hameen on the day of the execution. (D.I. 15, A-4.) Defendant Burris testified that Mr. Hackett met with Mr. Hameen on the date of execution "from 1:03 PM until 1:44 PM, and after being given special permission from the Warden, was subsequently permitted another visit that evening from 7:10 until 7:59 PM." (D.I. 32 at C-6.)

Mr. Hackett was denied access to the execution chamber at the time Mr. Hameen was executed.

## **DISCUSSION**

### **I. Legal Standard**

In pertinent part, Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a

court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Valhal Corp. v. Sullivan Assocs., Inc., 44 F.3d 195, 200 (3d Cir. 1995).

However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). To properly consider all of the evidence without making credibility determinations or weighing the evidence, a "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 151 (2000).

To defeat a motion for summary judgment, the non-moving party must:

do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). However, the mere existence of some evidence in support of the nonmovant will not be sufficient to support a denial of a motion for summary judgment; there must be enough evidence to enable a jury to reasonably find for the nonmovant on that issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Thus, if the evidence is "merely colorable, or is not significantly probative," summary judgment may be granted. Id.

## **II. Parties' Contentions**

By their motion, Defendants contend that they are entitled to summary judgment for several reasons. First, Defendants contend that Plaintiffs Hackett and NAIF lack standing to sue. Next, Defendants contend that Mr. Hameen's First Amendment rights were not violated because a prison inmate only retains those First Amendment rights that are not inconsistent with legitimate penological objectives. Defendants further contend that they are entitled to qualified immunity, sovereign immunity, and immunity under the Eleventh Amendment. Finally, Defendants contend that Plaintiffs have not perfected service of summons upon the Office of the Attorney General in contravention of 10 Del. C. § 3103(c).

In response to Defendants' allegation that Plaintiffs Hackett and NAIF lack standing, Plaintiffs contend that Mr. Hackett is the proper proponent of Mr. Hameen's legal rights because Mr. Hackett counseled Mr. Hameen for four years before his execution. In support of this contention, Plaintiffs offer as evidence a letter from Mr. Hameen to Defendant Hostermen, dated May 24, 1998, in which Mr. Hameen states he met with Plaintiff Hackett for an Islamic counseling session (D.I. 22 at A-4). Plaintiffs also offer a letter from Plaintiff Mr. Hameen to Mr. Hackett, dated May 28, 1998, in which Mr. Hameen discussed ways to improve counseling services for Muslim inmates on death row (Id.).

Mr. Hackett further contends that he suffered an injury himself because he made a promise to Mr. Hameen to support Mr.

Hameen with spiritual guidance throughout the execution process and was denied the ability to keep that promise. Mr. Hackett also contends that Defendants damaged his reputation by labeling him a security risk.

Further, Plaintiffs contend that Mr. Hackett had a relationship with Muslim inmates at DCC. In support of this contention, Plaintiffs offer a letter dated October 27, 2003, from Plaintiff Shakeerah Hameen-Haikal<sup>1</sup> to an unidentifiable recipient (D.I. 22 at A-2), Plaintiff Mr. Hameen's letter to Defendant Hostermen (D.I. 22 at A-4), and Mr. Hameen's letter to Mr. Hackett (Id.).

In response to Defendants' contention that Mr. Hameen's First Amendment rights were not violated, Plaintiffs offer the letter dated October 27, 2003, from Shakeerah Hameen-Haikal to an unidentifiable recipient (D.I. 22 at A-2) in which Ms. Hameen-Haikal asserts that she met with Defendants Snyder and Burris in May 2001 and told them that Mr. Hameen wanted "his Iman, Isma'il Hackett to be in the room with him during his execution as his spiritual advisor." (Id.).

### **III. Whether Plaintiff Hackett Lacks Standing**

Defendants contend that Mr. Hackett lacks standing to bring this lawsuit on his own behalf, on behalf of Mr. Hameen as a "next friend," and as a third party plaintiff on behalf of Muslim

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<sup>1</sup>The letter is signed "Shakeerah Hameen-Haikal," but in the Amended Complaint, "Shakeerah Hameen" was added as a plaintiff.

inmates. The factual underpinnings of Defendants' motion regarding standing are uncontested. Therefore, the Court will address only the legal question as to whether Mr. Hackett and NAIF lack standing to bring this lawsuit. For the reasons discussed, the Court concludes that Mr. Hackett lacks standing to bring this lawsuit.

A. Whether Plaintiff Hackett Lacks Standing To Bring This Lawsuit On His Own Behalf

Defendants first contend that Mr. Hackett lacks standing to bring this lawsuit on his own behalf.

The doctrine of standing consists of two parts: (1) the case or controversy requirement stemming from Article III, Section 2 of the Constitution, and (2) a subconstitutional, prudential element. Pitt News v. Fisher, 215 F.3d 354, 359 (3d Cir. 2000).

Defendants challenge the constitutional aspect of standing and contend that Plaintiff cannot establish a justiciable case or controversy. To establish constitutional standing, the plaintiff must show that (1) he suffered an "injury-in-fact", i.e. an injury which is concrete and particularized, and actual and imminent, not conjectural or hypothetical; (2) a causal connection exists between the injury and the challenged action of the defendant; and (3) the injury will be redressed by a favorable decision. See Pryor v. Nat'l Collegiate Athletic Ass'n, 288 F.3d 548, 561 (3d Cir. 2002). The burden of establishing standing rests with the plaintiff. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (citations omitted).



The Court finds that Mr. Hackett fails to allege a concrete and particularized injury that will be redressed by a favorable decision. Plaintiff Hackett contends that he suffered an injury because he made a promise to Mr. Hameen to support him with spiritual guidance throughout the execution process and was denied the ability to keep that promise. However, standing cannot be based on an injury that is purely abstract. See Coral Constr. Co. v. King County, 941 F.2d 910, 929 (9th Cir. 1991). Furthermore, purely psychological harm will not support standing. See Family & Children's Ctr., Inc. v. School City of Mishawaka, 13 F.3d 1052, 1058 (7th Cir. 1994).

Mr. Hackett also alleges that Defendants injured his character by labeling him a security risk. The Supreme Court has recognized that noneconomic injuries such as stigmatization can be a basis for demanding legal redress. See, e.g., Heckler v. Mathews, 465 U.S. 728 (1984); Americans United for Separation of Church & State v. Reagan, 786 F.2d 194, 201 (3d Cir. 1986). Such stigmatizing injury accords a basis for standing only to "those persons who are personally denied equal treatment by the challenged discriminatory conduct...." Allen v. Wright, 468 U.S. 737, 755-56. Moreover, the stigmatization must be one that is likely to be relieved by a favorable decision. Id. at 751. Applying the teaching of these cases, the Court finds that the direct injury to his character alleged by Mr. Hameen is legally insufficient to establish standing to challenge Defendants' actions.

In sum, the Court finds that Mr. Hackett fails to allege a concrete and particularized injury. Further, the Court finds that, even if it granted the injunction that Mr. Hackett requests, Mr. Hackett's broken promise to Mr. Hameen would remain unredressed. For these reasons, the Court concludes that Mr. Hackett lacks standing to bring this lawsuit on his own behalf.

B. Whether Plaintiff Hackett Lacks Standing To Bring This Lawsuit On Behalf Of Mr. Hameen

Defendants next contend that Mr. Hackett lacks standing to bring this lawsuit on behalf of Mr. Hameen as a "next friend."

A party seeking to establish "next friend" standing must, among other things, "be truly dedicated to the best interests of the person on whose behalf he seeks to litigate" and "must have some significant relationship with the real party in interest." Whitmore v. Arkansas, 495 U.S. 149, 163-64 (1990). The next friend must be acting in the interests of the real party in interest, and not for the next friend's own benefit. Id. The burden is on the next friend to establish this prerequisite. Id. at 164.

Reviewing the circumstances of this case in light of the applicable law, the Court concludes that Mr. Hackett has not demonstrated that he had a sufficiently significant relationship with Mr. Hameen to be a next friend for two reasons. First, the Court finds that Mr. Hameen's Last Will and Testament (D.I. 32, C-16), on file with the DCC, names Ms. Hameen as Executrix, and names Mr. Hameen's mother as the secondary Executrix. The Court finds

that the will mentions Mr. Hackett only with regard to assisting in Mr. Hameen's burial services. Second, the Court finds that Mr. Hameen's widow is a co-plaintiff in this lawsuit, so Mr. Hameen does not appear to need Mr. Hackett as next friend. The Court concludes that although Mr. Hackett may have acted as Mr. Hameen's spiritual advisor for some time, Mr. Hackett has not demonstrated actual proof that he is truly a next friend of Mr. Hameen.

Further, the Court is not persuaded that Mr. Hackett is acting in the interest of Mr. Hameen and not for Mr. Hackett's own benefit. In view of the jurisdictional limits of Article III, the Court must not open the door for Mr. Hackett to bring a generalized grievance against Defendants, rather than one to relieve an actual injury to Mr. Hameen.

For these reasons, the Court concludes that Mr. Hackett lacks standing to bring this lawsuit on behalf of Mr. Hameen.

C. Whether Plaintiff Hackett Lacks Standing To Bring This Lawsuit As A Third Party On Behalf Of Muslim Inmates

Defendants next contend that Mr. Hackett lacks standing to bring this lawsuit as a third party plaintiff on behalf of Muslim inmates.

In the ordinary course, a litigant must assert his or her own legal rights and cannot rest a claim to relief on the legal rights or interests of third parties. Powers. v. Ohio, 499 U.S. 400, 410 (1991). However, courts at times make exceptions to this general rule. Amato v. Wilentz, 952 F.2d 742, 748 (3d Cir. 1991). When a

plaintiff asserting third-party standing has suffered concrete, redressable injury, federal courts are to examine three additional factual elements before allowing the suit to proceed. See Amato, 952 F.2d at 749 (citing Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 623 n.3 (1989)).

Because the Court earlier concluded that Mr. Hackett lacks Article III standing to bring this lawsuit on his own behalf because he has not suffered concrete, redressable injury, the Court will not examine the additional elements for third-party standing. Rather, the Court concludes that Mr. Hackett lacks third party standing to bring this lawsuit on behalf of Muslim inmates.

#### **IV. Whether Plaintiff NAIF Lacks Standing**

The Court concludes that Plaintiff NAIF lacks standing to sue for the reasons discussed with regard to Plaintiff Hackett.

#### **V. Whether Defendants Are Entitled To Summary Judgment On The First Amendment Claim**

The court concludes that Defendants are entitled to summary judgment on the First Amendment claim.

"When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89 (1987).

Consistent with their initial burden on summary judgment, Defendants have set forth the basis for their motion and have

identified evidence demonstrating the absence of a genuine issue of material fact. Defendants' affidavits indicate that even if Mr. Hameen had requested that Mr. Hackett be present in the execution chamber, DCC would have denied that request as access to the chamber is only given to a few staff personnel. (D.I. 15 at 9, A-4.)

Plaintiffs have not offered any facts, by means of affidavit or other evidence, to support a finding that Defendants' conduct, preventing Mr. Hackett from being present in the execution chamber at the time of Mr. Hameen's execution, is not reasonably related to legitimate penological interests. Because Plaintiffs have failed to offer any evidence to support their claim that Defendants' conduct deprived Mr. Hameen of a First Amendment right, the Court must accept the facts as alleged by Defendants.

The Court concludes that Plaintiffs have not offered evidence sufficient to enable a jury to find for Mr. Hameen on the First Amendment claims alleged in his Second Amended Complaint (D.I. 23). The Court further concludes that Plaintiffs have not established a claim pursuant to § 1983 because they have not shown that the State Defendants' conduct deprived Mr. Hameen of a federally secured right.

Accordingly, the Court will grant Defendants' Motion For Summary Judgment as to the First Amendment claim. The Court will not address Defendants' remaining arguments with regard to immunity and lack of service.

### **CONCLUSION**

Because the Court concludes that Mr. Hackett and NAIF have not demonstrated they have standing to bring this lawsuit pursuant to either § 1983 or the RLUIPA, the Court will grant Defendants' Motion For Summary Judgment with regard to the standing issue.

Because the Court concludes that Plaintiffs have not offered evidence sufficient to enable a jury to find for Mr. Hameen on the First Amendment claims or established a claim pursuant to § 1983, the Court will grant Defendants' Motion For Summary Judgment as to the First Amendment claim.

An appropriate Order will be entered.

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FOR THE DISTRICT OF DELAWARE

N.A.I.F. INC., Friend of Abdullah :  
T. Hameen; ISMAA'EEL H. HACKETT; :  
and SHAKIRAH HAMEEN, :

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ROBERT SNYDER, BETTY BURRIS, :  
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RON G. HOSTERMEN, FRANK PENNELL, :  
STANLEY W. TAYLOR, JR., CARL C. :  
DANBERG, and PAUL HOWARD, :

Defendants. :

**ORDER**

At Wilmington, this 3 day of March 2005, for the reasons  
discussed in the Opinion issued this date;

IT IS HEREBY ORDERED that the Motion For Summary Judgment  
(D.I. 14) filed by State Defendants is **GRANTED**.

  
UNITED STATES DISTRICT JUDGE